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PART III.

Legislative Measures and Rules thereunder.

No. J. 1257—*Legis.* 17 *of* 1904-05, *dated* 13*th November* 1906.

The accompanying Draft of a Regulation to consolidate and amend the law relating to village offices in Mysore, together with a statement of objects and reasons therefor, is published for general information.

2. The Draft Regulation will be taken up for consideration at the end of three months from the date of its publication in the Gazette; and all suggestions and criticisms received within that period will be duly considered.

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Secy. to Govt., Gen. & Rev. Depts.

DRAFT OF
A REGULATION TO CONSOLIDATE AND AMEND THE LAW RELATING TO VILLAGE OFFICES IN MYSORE.

Whereas it is expedient to consolidate and amend the law relating to village offices in Mysore; His Highness the Maharaja is pleased to enact as follows:—

Preamble.

Short title, extent and commencement.

1. (1) This Regulation may be called the Mysore Village Offices Regulation, 190 .

(2) It extends to the whole of Mysore, and

(3) It shall come into force with effect from the expiry of one month from the date of its first publication in the official Gazette.

Definitions.

2. In this Regulation, unless there is something repugnant in the subject or context,—

"Village." "Village" means any local area now recognised as a village or hereafter declared by Government to be a village.

"Village Office." "Village Office" means every office to which emoluments have been attached and which is held for the performance of duties connected with the administration or collection of the revenue, or with the maintenance of order or with the settlement of boundaries, or other matters of civil administration pertaining to a village, whether the services originally appertaining to the office continue or have ceased to be performed or demanded, and by whatsoever designation the office may be locally known:

Provisos. Provided as follows :—

(1) The Government may, by notification in the official Gazette, exclude any village office or offices from the operation of all or any of the provisions of this Regulation, and may in like manner amend or cancel such notification.

(2) The Government shall have power to decide, in case of doubt, whether any office falls under the definition of village office.

"Village Officer" means an officer holding a village office or appointed to perform or performing the duties of a village officer.
"Village Officer."

"Emoluments" means and includes
"Emoluments."

(i) lands;

(ii) assignments of revenue payable in respect of lands;

(iii) fees in money or agricultural produce;

(iv) money-salaries and all other kinds of remuneration, granted or continued in respect of, or annexed to, any village office by the State.

"District Deputy Commissioner" means the chief local officer in charge of the revenue administration of a district.
"District Deputy Commissioner."

"Deputy Commissioner" includes an Assistant Commissioner in charge of a division who, for the time being, is authorized to exercise the powers of a Deputy Commissioner.
"Deputy Commissioner."

3. The emoluments of village offices, whether such offices be or be not hereditary, shall not be liable to be transferred or encumbered in any manner whatsoever, and it shall not be lawful for any Court to attach or sell such emoluments or any portion thereof.
Emoluments of village offices inalienable, and not liable to attachment.

4. (1) The Government may, with reference to rules made in this behalf under section 16, group or amalgamate any two or more villages or portions thereof so as to form a single new village, or divide any village into two or more villages; and, thereupon, all village offices in the villages, portions of villages or village grouped, amalgamated or divided as aforesaid, shall cease to exist, and new offices shall be created for the new village or villages.
Villages may be grouped, amalgamated or divided.

(2) In choosing persons to fill such new offices, the Deputy Commissioner shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have ceased to exist.

(3) The Government may also direct that the number of village offices attached to a village shall be reduced, and, thereupon, the Deputy Commissioner shall dispense with the services of the officers no longer required and shall retain those whom he may consider to be best qualified to discharge the duties of the remaining offices.
Reduction of village offices.

5. (1) The Deputy Commissioner may, of his own motion or on complaint and after enquiry, fine, suspend, dismiss or remove any holder of a village office whether in an unalienated or alienated village, for misconduct or for neglect of duty or incapacity or for non-residence in the village or for any other sufficient cause.
Power to punish village officers.

(2) An Amildar or Deputy Amildar may, of his own motion or on complaint and after enquiry, fine any holder of a village office in an unalienated village for any of the causes specified in sub-section (1) and in such amount as the Government may, by general or special order, prescribe.

(3) The proprietor of an alienated village may, of his own motion or on complaint and after enquiry, suspend, dismiss or remove any holder of a village office in his village, except the patel, shanbhog, and the village watchman, for any of the causes specified in sub-section (1).

(4) The officer or person taking proceedings against a village officer under any of the preceding sub-sections of this section shall make a record of his reasons for so doing in writing and furnish a copy of the same to such village officer.

6. When a vacancy occurs in the office of patel, shanbhog, nirganti, toti or talari of an unalienated village, the Deputy Commissioner shall fill up the vacancy in accordance with the provisions of the following sub-sections :—
Rules to be observed in making appointments to the offices of patel, shanbhog, etc., in unalienated villages.

General qualifications requisite in all cases. (1) No person shall be eligible for appointment who—

(a) is not of the male sex;

(b) has not attained the age of majority;

(c) is not physically and mentally capable of discharging the duties of the office:

(d) has not qualified according to the educational test, if any, prescribed for the office in question by rules made under section 21;

(e) has been convicted by a Criminal Court of any offence which, in the opinion of the Deputy Commissioner, disqualifies him for holding the office;

(f) by reason of his bad character or antecedents is, in the opinion of the Deputy Commissioner, disqualified for holding the office.

Rule of devolution of succession.

(2) The succession shall be regulated by the ordinary provisions of the Hindu Law: provided that it shall devolve on a single heir, and that, where there are more persons than one who would under the ordinary provisions of the said law be entitled to succeed to the last holder of the office, the preference shall, subject to the provisions of this section, lie with the eldest member of the eldest branch of such persons.

In certain cases person other than direct heir may be appointed.

(3) When the next heir is not qualified under sub-section (1), the Deputy Commissioner shall appoint the person next in order of succession (according to seniority of age in the senior branch) who is so qualified, and, in the absence of any such person in the line of succession, may appoint any person duly qualified under sub-section (1).

Temporary disqualification of heir in certain cases.

(4) Where an office has become vacant by the dismissal or suspension of the last holder the Deputy Commissioner may direct that, until the death or return to duty of such last holder, the duties of the office shall be performed by some person duly qualified under sub-section (1) who is not an undivided member of the family of the dismissed or suspended officer; provided that, when the officer who has been dismissed dies, or if the officer who has been suspended dies while under suspension, the vacancy caused by such death shall be filled up in accordance with the provisions of sub-sections (2) and (3).

Procedure to be adopted when heir is a minor.

(5) When the person who would otherwise be entitled to succeed to an office is a minor, the Deputy Commissioner shall register the minor as the heir of the last holder and appoint some other person qualified under sub-section (1) to discharge the duties of the office until the person registered as heir, on attaining majority or within three years thereafter, is qualified under sub-section (1) to discharge the duties of the office himself, when he shall be appointed thereto. If the person registered as heir under this sub-section dies, or if he remains disqualified under sub-section (1) for three years after attaining majority, the Deputy Commissioner shall fill up the vacancy as provided in sub-sections (2) and (3).

Method of filling up vacancy caused by resignation, dismissal, removal or suspension.

(6) If a vacancy is caused by the resignation, dismissal, removal or suspension of the holder of an office and the Deputy Commissioner does not give the direction referred to in sub-section (4) he shall fill up the vacancy in accordance with the provisions of this section as if it had been caused by the death of the said holder; provided that, upon the expiry of the period of suspension of an officer who has been suspended, or if, for any reason, an officer who has been dismissed, removed or suspended, is permitted to resume the office from which he has been dismissed, removed or suspended, the person appointed to fill the vacancy caused by the said suspension, dismissal or removal shall cease to hold the office.

Rules to be observed in making appointments to the offices of patel, shanbhog, etc., in alienated villages.

(7) When a vacancy occurs in the office of patel, shanbhog, nirganti, toti, or talari of an alienated village, the proprietor of such village shall fill up the vacancy in accordance with the provisions of the following sub-sections:—

General qualifications requisite in all cases.

(1) No person shall be eligible for appointment who—

(a) is not of the male sex;

(b) has not attained the age of majority;

(c) is not physically and mentally capable of discharging the duties of the office.

Rule of devolution of succession.

(2) The succession shall be regulated by the ordinary provisions of the Hindu Law: provided that it shall devolve on a single heir, and that, where there are more persons than one who would, under the ordinary provisions of the said law be entitled to succeed to the last holder of the office, the preference shall, subject to the provisions of this section, lie with the eldest member of the eldest branch of such persons.

In certain cases person other than direct heir may be appointed.

(3) Where the next heir is not qualified under sub-section (1), the proprietor shall appoint the person next in order of succession according to seniority of age in the senior branch who is so qualified, and, in the absence of any such person in the line of succession, may appoint any person duly qualified under sub-section (1).

(4) When the person who would otherwise be entitled to succeed to an office is a minor, the proprietor shall register the minor as the heir of the last holder and appoint some other person qualified under sub-section (1) to discharge the duties of the office, until the person registered as heir is qualified under sub-section (1) to discharge the duties of the office himself, when he shall be appointed thereto. If the person registered as heir under this sub-section dies, or if, on attaining majority, he proves to be disqualified under clause (c) of sub-section (1), the proprietor shall fill up the vacancy as provided in sub-sections (2) and (3).

Procedure to be adopted where heir is a minor.

8. The succession to village offices in unalienated and alienated villages other than those of patel, shanbhog, nirganti, toti and talari, shall devolve in accordance with the law or custom applicable thereto at the date on which this Regulation comes into force; or, in the absence of any such law or custom, in accordance with the provisions of sub-section (2) of section 6 and sub-section (2) of section 7 so far as applicable.

Succession in the case of offices other than patel, shanbhog, etc.

9. (1) Any person may sue before the Deputy Commissioner for any village office or for recovery of the emoluments of any such office, on the ground that he is entitled under sub-section (2) or (3) of section 6, or sub-section (2) or (3) of section 7, or section 8 of this Regulation, as the case may be, to hold such office and enjoy such emoluments; or being a minor, may sue before the Deputy Commissioner to be registered as heir of the last holder of any such office.

Suits for offices, for recovery of emoluments and for registry as heir.

Provided as follows:—

No suit for declaratory decree.

(i) No suit shall be entertained for a mere declaratory decree.

(ii) When one of the facts in issue in a suit is whether the emoluments of the office consist of land or of an assignment of revenue payable in respect of land, the Deputy Commissioner shall decide the claim on the assumption that only the said assignment constitutes the emoluments; but such decision shall not bar the right of the claimant to institute a suit in a Civil Court for recovery of the land itself.

Procedure in case of dispute as to nature of emoluments.

(2) If, at any time before the completion of the trial of a suit preferred under this section for any office or for the recovery of the emoluments of any office, it appears to the Deputy Commissioner that the claimant is not eligible for appointment under sub-section (1) of section 6 or sub-section (1) of section 7 of this Regulation, as the case may be, he shall pass an order rejecting the plaint.

Rejection of plaint when claimant is ineligible for appointment.

10. (1) No suit preferred before a Deputy Commissioner under the last preceding section shall be entertained which is not preferred within three years from the date of the cause of action arising, whether such date be before or after the commencement of this Regulation.

Limitation of time within which suits may be brought.

Provided that, in the case of a person who, by reason of minority, was disqualified for holding office, the right to sue for such office or for the recovery of the emoluments thereof shall accrue from the date of his attaining majority.

Limitation in case of minority.

(2) No application for the execution of a decree or order passed under this Regulation shall be entertained, if made after the expiration of one year from the date of such decree or order.

Limitation of time within which execution of decree or order may be applied for.

(3) Decrees or orders passed previous to the commencement of this Regulation in regard to claims to village offices or the emoluments annexed thereto, may be executed under the provisions of this Regulation; provided that no application for the execution of any such decree or order shall be entertained if made either after the expiration of three years from the date of such decree or order or after the expiration of one year from the commencement of this Regulation.

Execution of decrees and orders passed previous to commencement of this Regulation.

(4) In cases in which the decree or order sought to be executed was appealed against, the periods of limitation prescribed in sub-sections (2) and (3) shall commence from the termination of the appeal.

Limitation when appeal preferred.

11. The District Deputy Commissioner may transfer to his own file any suit on the file of any Assistant Commissioner in charge of a division in the district, or transfer any suit from the file of one such Assistant Commissioner to that of another or to the file of an Assistant Commissioner not in charge of a division, for disposal.

Power of District Deputy Commissioner in regard to transfers of suits.

12. (1) The trial of suits under this Regulation shall be regulated by rules made by Government under section 21 and by the following provisions:—

Procedure to be observed in trying suits.

(i) A date shall be fixed for the hearing of the suit and the same shall be notified to the parties, who shall be entitled to be heard in person or by agent;

Date of hearing to be fixed and parties to be heard.

(ii) The parties shall be entitled to produce witnesses and to demand that any person whose evidence they require shall be summoned as a witness or that any person shall be summoned to produce a document,

Witnesses may be produced or summoned.

and the officer trying the suit shall comply with such demand, unless, for reasons to be recorded, he considers it unnecessary to do so;

(iii) The officer trying the suit shall record in his own hand a memorandum containing the material averments of the parties, the material portions of the evidence, his decision and the reasons therefor.

Record of proceedings.

(2) Every person to whom a summons is issued under this section shall be legally bound to obey the same.

Obligation to obey summons.

13. Decrees and orders passed in suits under this Regulation may provide for payment of costs according to such scale and subject to such rules as may be prescribed by Government under section 21, and shall be executed in accordance with rules to be made under the said section.

Decrees may provide for costs and shall be executed according to rules made by Government.

14. (1) If, before or during the hearing of a suit under this Regulation or of an appeal against a decree or order passed in a suit under this Regulation, or if, in the execution of any such decree, any question of law or usage having the force of law, or of the construction of a document which construction may affect the merits, arises, and the officer trying the suit or appeal or executing the decree entertains reasonable doubt on such question, he may, either of his own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained and refer such statement for the decision of the Chief Controlling Revenue authority and shall stay further proceedings until the said decision is communicated to him.

In certain cases Deputy Commissioner may refer question of law to the Chief Controlling Revenue authority.

(2) If the officer making the reference to the Chief Controlling Revenue authority is not the District Deputy Commissioner, the reference shall be made through the District Deputy Commissioner.

(3) The Chief Controlling Revenue authority shall, if any of the parties so request, hear him or his agent and shall decide the point referred and transmit a copy of its judgment to the officer by whom the reference was made, and the said officer shall, on receipt thereof, proceed to dispose of the case in conformity with the decision of the Chief Controlling Revenue authority, and the correctness of the decision of the Chief Controlling Revenue authority shall not be contested in any appeal made under this Regulation.

Procedure to be followed in case of such reference.

Decision of Chief Controlling authority not to be contested.

15. All suits brought and appeals made previous to the commencement of this Regulation shall, after the commencement thereof be heard and disposed of as if they had been preferred under this Regulation.

Disposal of suits and appeals pending at commencement of Regulation.

16. No Civil Court shall have authority to take into consideration or decide any claim to succeed to, or to the possession of, any village office, or any question as to the rate or amount of the emoluments of any village office, or except as provided in proviso (ii) to sub-section (1) of section 9, any claim to recover the emoluments of any such office.

Jurisdiction of Civil Courts-barred.

Provided that, if, in any suit instituted under this Regulation, the defendant has pleaded before the Deputy Commissioner that a Revenue Court has no jurisdiction to entertain the suit, on the ground that no emoluments, as defined in this Regulation, appertain to the office in respect of which the suit is brought, and if, on appeal preferred from the decree in such suit, the appellate authority has decided adversely to such plea, the defendant may, within six months from the date of the appellate decree, institute a suit in a Civil Court to set aside such appellate decree on the said ground and on that ground only.

Proviso.

17. (1) From every order passed by a Deputy Commissioner under section 4 or 5, and from every decree or order passed by a Deputy Commissioner in a suit preferred under section 9, an appeal shall lie, within one month, to the District Deputy Commissioner, or, if the said order or decree was passed by the District Deputy Commissioner, an appeal shall lie, within three months, to the Chief Controlling Revenue authority. The decision, on appeal, of the District Deputy Commissioner or the Chief Controlling Revenue authority, as the case may be, shall be final.

Appeal against order or decree of Deputy Commissioner.

Provided that, in respect of the offices of patel and shanbhog, a second appeal shall lie within three months, to the Chief Controlling Revenue authority, against the decision on appeal of the District Deputy Commissioner in suits preferred under section 9 and in cases of dismissal of a village officer under section 5.

Second appeal in certain cases.

(2) From every order passed by an Amildar or Deputy Amildar under sub-section (2) of section 5 and from every order passed by a proprietor under sub-section (3) of section 5, an appeal shall lie within one month, to the Deputy Commissioner, whose decision shall be final.

Appeal against order of Amildar or Deputy Amildar or proprietor.

18. If the officer to whom an appeal is presented under this Regulation in the capacity of District Deputy Commissioner or Deputy Commissioner happens to be the officer who passed the decision which is appealed against in another capacity, he shall report the fact to the Chief Controlling Revenue authority or to the District Deputy Commissioner, as the case may be, and the appeal shall be disposed of by the Chief Controlling authority or District Deputy Commissioner, and the order passed on appeal shall be final.

Disposal of appeal by officer who passed original order.

19. The provisions of sections 5 and 12 of the Indian Limitation Act, 1877, so far as they relate to suits, appeals and applications shall, *mutatis mutandis*, apply to suits, appeals or applications for the execution of decrees or orders, instituted, preferred or made under this Regulation.

Certain sections of the Limitation Act apply.

20. The Government may declare that the powers of punishing village officers which are vested in the Deputy Commissioner by this Regulation shall be exercised in any specified local area by the Superintendent or Assistant Superintendent of Police in respect of all, or any of, the village watchmen or Police officers in that local area. From every order fining, suspending, dismissing or removing a village watchman or Police officer passed by a Superintendent or Assistant Superintendent of Police by virtue of a declaration made under this section, an appeal shall lie, within one month, to the District Deputy Commissioner, whose decision shall be final.

Power of Government to place village watchman under Police authorities.

21. (1) The Government may, by notification in the official Gazette, make rules, not inconsistent with this Regulation, in regard to the following matters :—

Government may make rules on certain subjects.

(i) the division, grouping and amalgamation of villages ;

(ii) the holding of enquiries under sections 4 and 5, and the hearing of appeals under section 17 ;

(iii) the educational qualifications, if any, required of the holders of village offices ;

(iv) the procedure to be followed in disposing of suits and appeals from decrees or orders passed in suits and the registers to be maintained in connection therewith ;

(v) the execution of decrees and orders passed in suits and the taxation of costs ;

(vi) the emoluments to be assigned to the holders of village offices, and the method of assessment and payment thereof ;

(vii) the duties of holders of village offices, and the descriptions and forms of the accounts and registers to be kept by them ;

(viii) the custody, production and transfer of the accounts and other records kept by holders of village offices ;

(ix) any other matters calculated to enhance the efficiency of the village service, or connected with the carrying out of the purposes of this Regulation.

(2) Until rules are made by Government in respect of any of the matters referred to in the preceding sub-section, the rules if any in force with regard thereto immediately previous to the commencement of this Regulation shall, so far as they are consistent with this Regulation, be deemed to be in operation and to have been made under the preceding sub-section.

Until such rules are made, existing rules to be in force.

Statement of Objects and Reasons.

The necessity for replacing the existing scattered and disjointed body of rules and orders with regard to Village Offices in Mysore by a systematic scheme of legislation has engaged the consideration of Government for some time past. Of these rules and orders a few, such as the Rules* for the remuneration of patels and shanbhogs and minor village servants have the force of law; others are orders passed by Government in appeals from the decisions of Revenue Officers in regular suits ; and a large number are merely administrative orders passed on the miscellaneous side and as such liable to be disregarded by subordinate officers in regular suits. The course of decisions, too, especially in the matter of succession to Village Offices, has not been by any means always uniform or certain ; with the result—which conflicting decisions induce—of encouraging litigation. Lastly, the success of the Revenue administration depends to a great extent upon the efficiency of the village service ; and the introduction of a law to regulate the latter and place it upon a proper basis follows naturally on the introduction of the Land Revenue Code, which has governed the former for the last fifteen years.

*Issued, under the authority of the Government of India, which the Chief Commissioner's Notifications No. 219, dated the 27th October 1874, and No. 123, dated the 1st August 1878.

Such then is the occasion for the accompanying Draft Regulation, which, it may be observed, follows to a large extent (but with important variations) the lines of the Madras Hereditary Village Offices Act, III of 1895, the provisions of the latter being found, on careful examination, to be much better adapted to local requirements than are those of the Bombay Hereditary Offices Act, III of 1874.

It now remains to describe briefly the main provisions of the proposed Regulation.

Section 2 deals with definitions.

Under the definition of "village" here given, it will be possible to declare two or more villages ordinarily so called to be a single village for the purposes of the Regulation.

The characteristics of a "Village Office" as here defined are:—

(i) the assignment of "emoluments" (a term defined comprehensively in the same section); and (ii) the annexing to the office of duties connected with some branch of the civil administration pertaining to a village, whether these duties are actually demanded or not.

The provisos give power to Government, on the one hand, to exclude any office from the operation of the Regulation, and, on the other, to decide whether a particular office falls under the definition or not.

The distinction drawn between "Deputy Commissioner" (a term applicable in certain cases to a Divisional Assistant Commissioner) and "District Deputy Commissioner" (denoting the Chief Revenue Officer of the District) is a convenient one, and has been taken from the Madras General Clauses Act, 1891.

Section 3 embodies the existing law with respect to the inalienability of emoluments and their non-liability to attachment and sale by Courts.

Section 4 empowers Government to group, amalgamate or divide villages, and to reduce the number of offices, in a village, as may be necessary.

Section 5 deals with the powers of Deputy Commissioners, Amildars and Inamdars to punish village officers for reasons to be recorded in writing. In consonance with the existing practice, the powers of the Deputy Commissioner to punish officers in alienated villages have been assimilated to those with respect to officers in Government villages. In Madras the latter powers are subject to restriction.

Sections 6 and 7 declare the rules to be observed in making appointments to the five main Village Offices of patel, shanbhog, nirganti, toti and talari. It is merely necessary to note that these rules will, among other things, do away with the right of females in certain circumstances to be registered as the holders of Village Offices, but not of course, so as to interfere with claims to succession being traced *through* females, and that the rule of devolution of succession to a single heir as laid down will exclude the performance of duties by rotation: the latter being a system attended with many difficulties, not satisfactory on the one hand to the parties concerned; and not conducive on the other to the efficiency of business, besides leading to faction, litigation, and intrigue and to a relaxation of the sense of responsibility. It may also be remarked that, under section 7, the confirmation of the Deputy Commissioner will not in future be necessary, as at present, for appointments of patels and shanbhogs made by proprietors of Inam villages.

Section 8 deals with succession in the case of other Village Offices than the five specified, where such exist and are recognized. But, as a matter of fact, it may be observed that the connection of Government with such other offices comprised in the ancient *barabaluti* system has practically ceased.

Sections 9 to 15 and 17 to 19 embody the usual provisions about suits, procedure, appeals, limitation, and similar matters.

Section 16 bars the jurisdiction of Civil Courts in regard to clamis for the succession of Village Offices in respect of emoluments.

Section 20 will probably become unnecessary on the passing of the Police Regulation now before Government.

Section 21 enumerates the matters in regard to which Government may frame rules; and declares that, till rules as so made, the existing rules shall continue in force.